

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR MONDAY, April 28, 2011.

John Clapp, Chair, called to order the regular meeting of the Frederick County Board of Appeals ("Board") for Thursday, April 28, 2011 at 7:00 p.m. in the 1st Floor Hearing Room in Winchester Hall. Present were Al Duke, Sean Michalski, Carole Jaar Sepe and Brad Dyjak. Also present were Kathy Mitchell, Assistant County Attorney, and Community Development Division staff Larry Smith, Zoning Administrator, and Rick Brace, Principal Planner and Board Secretary.

Official Minutes of the Board of Appeals' meetings are kept on file in the Community Development Division.

Mr. Clapp stated the rules and procedures for the hearing and swore in all persons who expected to testify at the meeting.

Introduction of New Board Member

The Board recognized newly appointed Board of Appeals member, Mike Bowersox, who was seated in the audience.

Approval of Minutes

On a motion from Mr. Duke, seconded by Mr. Michalski, the Board unanimously approved the March 24, 2011 minutes.

Cases

B-11-01 Constellation Energy Project & Services Group Inc. c/o Miles & Stockbridge

An application was filed requesting special exception to establish a nongovernmental utility operated photovoltaic solar farm per Zoning Ordinance sections 1-19-5.310, 1-19-210, and 1-19-8.339, located on the west side of Old Frederick Road at the intersection of College Lane (Tax Map 8, Parcel 48) Zoned Institutional/ Agricultural.

This case was continued from the March 24, 2011 hearing. The Board acknowledged the receipt of comments from the Historic Preservation Commission. The Applicant also satisfied the Board's request for documentation of financial proprietary or contractual intent and interest in the subject property by submitting an Agreement and Ground Lease into the record.

Mr. Duke made a motion to approve the request on the basis of the application having met the criteria set forth in Sections 1-19-3.210 and 1-19-8.339 of the Frederick County Zoning Ordinance, subject to all agency comments, testimony and evidence provided, with the condition that the Applicant work with the Frederick County Planning Commission, Staff and adjoining property owners to consider and implement additional landscaping or other mitigation to address concerns by adjoining property owners about views of the Solar fields from their properties, seconded by Mr. Michalski.

Mr. Michalski made a motion requested an amendment to the motion to include the Applicant's testimony that there would not be toxic chemicals associated with the solar panels related to the health and safety of the workers and that the visual appearance would be mitigated both by the condition of the landscaping and the mat finish coating of the panels.

Mr. Duke agreed to amend the motion.

The Board unanimously approved the amendment to the motion.

Ms. Sepe made a motion requesting an additional amendment to the motion to also include the condition that the Owner's trailers shown on the site plan which the applicant indicated were temporary would be removed after construction, seconded by Mr. Michalski. The motion failed. (Yeas 2, Nays 3 – Clapp, Duke, Dyjak)

The Board voted on the original motion from Mr. Duke with amendment from Mr. Michalski and unanimously approved the request.

B-11-03 New Cingular Wireless PCS, LLC d/b/a AT&T Mobility c/o Saul Ewing, LLP

An application was filed requesting a special exception to establish a 156 ft. communications tower/monopole including a 6 ft. lightning rod with twelve (12) antennae attached at centerline height of 148 ft and a 11'5" x 20' concrete pad within a 50' x 50' compound, located on the west side of Quirauk School Road, 500 ft. northwest at intersection with Foxville Road (Tax Map 17, Parcel 42) Zoned Resource Conservation.

On a motion from Ms. Sepe, seconded by Mr. Duke, the Board continued the case to the May 26, 2011 hearing to allow the Historic Preservation Planner to review the Applicant's historical data and to address concerns raised in relation to the NEPA report. (Yeas 3, Nays 2 – Clapp, Michalski)

B-11-02 Liberty Towers, LLC c/o McEvoy & Dean

An application was filed requesting a special exception to establish a 195 ft. Communications tower/monopole with a 4 ft. lighting rod and 100 ft. x 100 ft. leased area with a 70' by 80' fenced in equipment compound, located on the west side of Harley Road, .4 miles north of Sumantown Road (Tax Map 74, Parcel 240), Zoned Agricultural.

The Staff report was presented and agency comments read into the record. The Applicants presented their presentation and submitted all materials into the record. Numerous citizens spoke in relation to the application, after which the Applicants utilized the remaining portion of their time for Rebuttal testimony.

On a motion from Mr. Duke, seconded by Ms. Sepe, the Board closed the record and unanimously moved to continue the case to Monday, May 2, 2011 at 7:00 p.m. in order to resume with Board discussion and decision on the case.

The Chair adjourned the meeting at 11:25 p.m.

Respectfully submitted
Erica Cooke
Recording Secretary

_____/s/
John R. Clapp, Chair